

## **EQUAL OPPORTUNITY BOARD HEARING PROCEDURES**

### **I. REQUEST FOR HEARING**

A charging party or respondent aggrieved by the director's recommended final order may request a hearing before a panel of the equal opportunity board by writing to the director of the Equal Opportunity Board 111 N.W. 1st Street, Suite 650, Miami, Florida 33128, not later than ten (10) days after service of the director's findings. Service of the request for a hearing shall be made in person or by certified mail.

### **II. GOVERNMENT IN THE SUNSHINE**

All hearings, deliberations and decisions of the equal opportunity board shall be open to the public in accordance with Section 186.011 et seq., Fla. Stat., as amended.

### **III. NOTICE OF HEARING**

A. The hearings of the board shall be held at such time and in such place as shall be designated by the director of the equal opportunity board.

B. At least twenty (20) days prior to the hearing, the director of the equal opportunity board shall deliver a notice of hearing to the respondent and the charging party by personal service or certified mail. Such notice shall include the time and place at which the hearing is to be held, and shall inform the parties that any appellate review will require a verbatim record of the proceedings.

### **IV. SUBPOENAS AND DISCOVERY**

A. A party may pursue discovery only through the methods set forth in the Florida Rules of Civil Procedure and shall be bound by the limitations set forth in those rules.

B. Any party to a hearing before the board may request a reasonable number of subpoenas to be issued upon the authority of the chairperson of the board to compel the appearance of any person to testify before the board or testify at deposition. Any request for subpoenas shall be in writing and shall be received by the director not less than fifteen (15) days prior to the hearing or deposition. Such a request shall state the time and place at which the witness is to appear, and the name of the party on whose behalf the witness is called to testify. Where a subpoena duces tecum is requested, the request shall describe with particularity any material to be produced.

C. The requesting party is responsible for service of any subpoenas issued pursuant to this section. Service shall be accomplished as provided in Chapter 48, Fla. Stat., as amended.

D. Within ten (10) days after service of a subpoena upon any person, but in no event later than the time specified in the subpoena for compliance, such person may petition the board to revoke or modify the subpoena. The board shall grant the petition upon a finding that the subpoena requires appearance or attendance at an unreasonable time or place, that it requires production of evidence which is not relevant to the proceeding before the board, that it does not describe with sufficient particularity the evidence to be produced, that compliance would be unduly onerous, or for other good cause.

E. All discovery shall cease six months after submission of a request for hearing or 15 days prior to the hearing

whichever is earliest. Any party may request an extension of discovery for good cause shown.

F. All procedural issues, including but not limited to issues regarding subpoenas or discovery shall be decided by the chairperson of the board with advice from the county attorney. Any person aggrieved by the chairperson's decision may appeal that decision to a panel of three board members which shall be convened solely to resolve the issue of procedure or discovery. The decision of the panel shall be final as to an issue regarding procedure, discovery or the issuance of subpoenas.

## **V. EVIDENCE**

A. Any party, member of the board or the director may call, examine and cross-examine witnesses, and introduce documentary and other evidence into the record. Upon offering an exhibit into evidence at a hearing, a party shall provide an original and four copies to the board, and simultaneously furnish copies to all other parties.

B. All relevant and material evidence, oral or written, may be received. Hearsay evidence shall be accorded such weight as the circumstances warrant. In its discretion, the board may exclude irrelevant, immaterial or unduly repetitious evidence. A party is entitled to present his or her case by oral and or documentary evidence, to submit rebuttal evidence, and to conduct cross-examination. Both parties may appear in person or through any duly authorized personal representative.

C. The burden or persuasion, or the duty of producing evidence to substantiate an allegation of discrimination, remains with the charging party in all hearings before the board.

D. Final orders of the board shall be supported by competent substantial evidence.

## **VI. ADMINISTRATIVE NOTICE**

Upon request the board shall take administrative notice of provisions of federal law, state law, local ordinances, decisions of other administrative agencies and other matters subject to judicial notice; PROVIDED, HOWEVER, that matters so noticed shall be specified on the record. Either party shall be afforded an opportunity, on the record, to rebut such matters.

## **VII. MOTIONS OR OBJECTIONS**

A. Any preliminary motions or objections shall be heard and disposed of by the hearing panel before proceeding to the merits of the case. Upon its own motion the hearing panel may defer ruling on any such motion until the conclusion of the evidentiary portion of the hearing.

B. After the charging party has completed the presentation of his or her evidence, an opposing party may move for dismissal on the ground that on the facts and the law the charging party has shown no prima facie violation of Chapter 11A, Code of Metropolitan Dade County, without waiving the right to offer evidence if the motion is not granted. The hearing panel may grant the motion and enter a final order against the charging party upon a specific finding that the charging party has failed to establish a prima facie case or may decline to enter its final order until the conclusion of the evidentiary portion of the hearing. A final order granting such a motion to dismiss shall operate as an adjudication on the merits.

C. Upon approval of a proper motion by any member of the hearing panel, the director's recommended final order shall be entered as the final order of the board if the party requesting the hearing fails to appear after proper notice or fails to establish good cause for such failure to appear.

## **VIII. THE HEARING**

A. The chairperson shall open the hearing at the time and place specified in the notice of hearing, or as soon thereafter as a hearing panel of the board can be obtained. After a reasonable time, if the chairperson determines that no hearing panel can be obtained, the hearing shall be continued until such time as a hearing panel can be obtained. At least three members of the equal opportunity board shall be sufficient to constitute a hearing panel.

B. Either the charging party or the respondent may request a continuance to obtain counsel or a duly authorized representative. At the commencement of the hearing, the chairperson shall ask whether both parties are prepared to proceed.

C. The director's recommended final order and complete investigation file shall be entered into the record as an exhibit of the board.

D. Judicial rules of procedure, including rules of evidence and civil procedure, need not be strictly applied to these quasi-judicial administrative hearings.

E. Each party shall have the right to present an opening statement. After opening arguments from each party, the charging party shall have the opportunity to call witnesses and present any evidence. Following the presentation of the charging party's case,

the respondent shall have the right and opportunity to present a defense by offering testimony and documentary evidence. The charging party shall then have the right to present any rebuttal testimony or other evidence. The director may then present any additional evidence deemed relevant or material. Upon request from any party, the chairperson may provide a reasonable amount of time for oral argument at the conclusion of the hearing.

## **IX. RENDERING THE DECISION**

A. The final decision of a hearing panel of the equal opportunity board may be reserved or the decision may be rendered immediately. All decisions shall include a statement of (1) findings and conclusions with respect to all material issues of fact or law presented on the record, and (2) the appropriate order for sanction, relief or denial thereof.

B. All decisions shall be deemed final and effective when rendered by the hearing panel. For purposes of this subsection, the term "rendered" shall mean a written final order which addresses the issues of liability, damages and attorney fees which is ratified by the hearing panel and signed by the chairperson.

## **X. ATTORNEY FEES, EXPERT WITNESS FEES AND COST OF LITIGATION**

A. A motion for attorney fees, expert witness fees or costs of litigation in a proceeding before the board may be filed with the board or the director by any party prior to the close of the evidentiary hearing or prior to adoption of a final order by the hearing panel. All evidence supporting or contravening the claim that attorney fees, expert witness fees or costs should be awarded shall be presented at the final evidentiary hearing. The evidence presented should address

the threshold question of whether fees should be awarded to any party and need not specify the amount of fees claimed.

B. If the board determines that an award to the prevailing party of attorney fees, expert witness fees or costs of litigation is appropriate, the director shall notify the parties of that determination by certified mail or personal service. Within twenty (20) days of the service of such notification, the prevailing party shall file with the board, and serve on all opposing parties, a written proposal for the amount of fees to be awarded. The proposal shall be sworn and shall be supported by affidavit on any individual having personal knowledge of the facts contained therein. The proposal shall include:

1. The name and business address of the attorney performing the services for the prevailing party;

2. The experience, reputation and background of each of the attorneys listed, including the number of years of practice, experience in the field of civil rights and discrimination litigation, specialized academic background, professional associations and any other pertinent experience;

3. The number of hours or portions thereof expended by each of the above attorneys in this matter, identifying the date, description of each service performed and time expended on that matter from contemporaneously kept time records which must be produced upon request;

4. The hourly rate for the attorney for whom the fee is claimed, including the hourly rate normally charged by that attorney, as supported by affidavits attesting to the hourly rate prevailing in the community for similar

work by attorneys of similar experience and competence;

5. Whether this case was contingent in nature or whether compensation was certain and whether the lodestar fee, which consists of the hourly rate multiplied by hours expended, should be adjusted based on contingency;

6. Whether there has been a delay in the receipt of payment for services rendered, and if so, the nature, length and cause of the delay, and whether the lodestar fee should be adjusted to reflect this factor;

7. Whether the lodestar fee should be adjusted because of the quality of representation and the reason therefor;

8. Whether the prevailing party believes that issues presented in this case were particularly novel or difficult and, if so, the reasons for that belief;

9. Whether the acceptance of employment in the particular case involved the loss of employment with other clients while employed in the particular case, and if so, why;

10. The nature of the attorney-client relationship, stating whether this case was performed for a casual client or an established and constant client;

11. Whether an agreement with respect to fees existed between the attorney and client, and, if so, a copy of that agreement must be attached to the fee proposal, or if



the agreement was oral, the terms thereof;

12. The amount actually billed to the client for the case, attaching to the fee request copies of all bills to the client for the case. If the amount billed differs from the amount requested, the prevailing party must explain the reasons therefor;

13. Any other relevant factors to be considered by the board in the determination of an appropriate fee, including the amounts of awards in similar cases;

14. The amount of costs and expert witness fees incurred in this proceeding, itemizing each such cost and attaching documentation to support the request.

C. An opposing party who disagrees with any aspect of the proposal filed by the prevailing party, shall file a counterproposal within fifteen (15) days after the filing of the proposal. The counterproposal shall specify the items with which the opposing party agrees, the items with which the party disagrees and the reasons for the disagreement. All counterproposals shall be supported by affidavit where appropriate, or if the information supporting the claim is exclusively in the possession of the attorney for the prevailing party, the opposing party may move the board for an order seeking discovery of the information. In such a motion, the moving party must state that the information sought could not be obtained elsewhere and that the prevailing party has refused to cooperate voluntarily. If no timely counterproposal is filed, the prevailing party's proposal shall be deemed accepted.

D. An evidentiary hearing shall not be held on the issue of attorney's fees, expert witness fees and costs. A final award of attorney fees, expert witness fees and costs may be issued by either the

hearing panel or by the board at any regular business meeting. In issuing its final order the hearing panel or the board shall consider the proposals and counter proposals filed by the parties. A request for attorney's fees, expert fees and costs which is not supported by appropriate documentation shall be denied.

E. In determining an award of attorney fees, the board shall be guided by the considerations set forth by the Florida Supreme Court in Standard Guaranty Insurance Co. v. Quanstrom, 55 So.2d 828 (Fla. 1990).

## **XI. INTEREST**

A. Prejudgment interest shall accrue on back-pay from the date of demand for remedy of discrimination or the date of filing of the complaint whichever occurred first and shall accrue at the rate provided in Section 687.01, Fla. Stat., as amended.

B. Interest shall accrue on awards of the board at the rate provided in Section 55.03, Fla. Stat., as amended.

## **XII. DISCRETIONARY REVIEW**

A. Within fifteen (15) days following the issuance of the written final order by the board, a party or any member of the board may file a written request for rehearing of a case of amendment of a final order by the equal opportunity board. A request for rehearing shall state with particularity the factors overlooked or misapprehended by the original hearing panel and shall not reargue the merits of the case.

B. At the first regularly scheduled meeting following the receipt of such a request, the members of the board shall

vote on whether to grant the request for review.

C. If the request for rehearing is granted, the board shall expeditiously schedule a hearing. At least five (5) members shall constitute a hearing panel for the purposes of such review.

D. Upon the conclusion of rehearing, the rehearing panel shall issue a written final order which may modify, rescind or reverse the final order issued by the original hearing panel.

E. No appeal to the board shall be had from a denial of a request for rehearing.

### **XIII. JUDICIAL REVIEW**

A. The board's final order shall be subject to judicial review in accordance with the Florida Rule of Appellate Procedure. For the purposes of such review, any notices required to be filed with the lower tribunal pursuant to the Florida Rules of Appellate Procedure shall be filed with the director. The board shall provided the index and record on appeal when required by, and in accordance with, the Florida Rules of Appellate Procedure. A fee may be charged by the board for the preparation and transmission of the record on appeal to the court of appropriate jurisdiction.

B. All proceedings before the equal opportunity board shall be recorded through the use of a tape recorder or by live court reporter. Should any party desire to appeal from any final order rendered by the board, a record of the proceedings is required. For appellate purposes, the party desiring to appeal must personally ensure that a verbatim record of the proceedings is made, which record includes the testimony and evidence upon which the appeal is to be based.

C. Any party desiring the service of a live court reporter, in lieu of board tape recordings of the proceedings before the board shall provide for the same.

D. Unless specifically ordered by the board or a court of competent jurisdiction, the commencement of an appeal does not operate to suspend or stay a final order of the board or the director.